

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH LUIS GARCIA,

Defendant.

4:22-CR-3039

ORDER

This matter is before the Court on the defendant's objection ([filing 59](#)) to the Magistrate Judge's Findings and Recommendation ([filing 56](#)) recommending that the defendant's motion to dismiss ([filing 46](#)) be denied. The Court has conducted a de novo review of the motion to dismiss pursuant to [28 U.S.C. § 636\(b\)\(1\)](#). The defendant's objection will be overruled, and the Court will adopt the Magistrate Judge's findings and recommendation.

Specifically, the Court agrees that any risk that a verdict would not be unanimous can be cured by a proper jury instruction. If the government elects to pursue both theories of the defendant's guilt at a jury trial, a jury may be instructed that in order to find the defendant guilty, it must unanimously agree on whether the defendant was a felon, an unlawful user of or a person addicted to any controlled substance, or both. *United States v. Pietrantonio*, 637 F.3d 865, 869 (citing *United States v. Nattier*, 127 F.3d 655, 657 (8th Cir. 1997)); *see also United States v. Fairchild*, 819 F.3d 399, 413 (8th Cir. 2016).

The Court also agrees that *United States v. Jackson*, 69 F.4th 495 (8th Cir. 2023), and *United States v. Seay*, 620 F.3d 919 (8th Cir. 2010), control the defendant's facial constitutional challenges to §§ 922(g)(1) and 922(g)(3), respectively. The defendant admits that *Jackson* controls both his facial and as-applied challenges to § 922(g)(1). [Filing 59 at 4](#). And because *Seay* did not

engage in the means-end scrutiny abrogated by the Supreme Court in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), this Court regards *Seay* as binding and leaves to the Eighth Circuit "the prerogative of overruling its own decisions." *United States v. Le*, No. 4:23-cr-14, 2023 WL 3016297, at *2 (S.D. Iowa Apr. 11, 2023) (quoting *United States v. Coonce*, 932 F.3d 623, 641 (8th Cir. 2019)).

Finally, the Court agrees with the Magistrate Judge's recommendation to deny the defendant's as-applied challenge to § 922(g)(3) without prejudice to be reasserted upon a full evidentiary record.¹ Accordingly,

IT IS ORDERED:

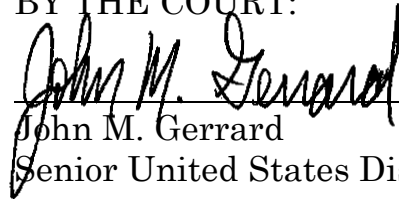
1. The Magistrate Judge's Findings and Recommendation and Order ([filing 56](#)) is adopted.
2. The defendant's objection ([filing 59](#)) is overruled.

¹ The Court notes, however, such a reassertion may prove futile. In *Jackson*, the Eighth Circuit concluded that "legislatures traditionally employed status-based restrictions to disqualify categories of persons from possessing firearms." 69 F.4th at 505. Congress prohibited "categories of *presumptively* dangerous persons from transporting or receiving firearms," and the Eighth Circuit has affirmed such categorizations, even in as-applied challenges. *Jackson*, 69 F.4th at 505 (quoting *Lewis v. United States*, 445 U.S. 55, 64 (1980)) (emphasis added). Given the case law in this jurisdiction, it's hard to imagine a set of facts that would justify treating an unlawful user of a controlled substance (e.g., methamphetamine) differently than a person convicted of a felony, if Congress imposed both prohibitions based on its belief that people in those categories "deviated from legal norms or . . . presented an unacceptable risk of dangerousness." Compare § 922(g)(3), with 922(g)(1); *Jackson*, 69 F.4th at 505.

3. The defendant's motion to dismiss ([filing 46](#)) is denied, and his as-applied challenge to [18 U.S.C. § 922\(g\)\(3\)](#) is denied without prejudice to be reasserted upon a full evidentiary record.

Dated this 15th day of December, 2023.

BY THE COURT:



John M. Gerrard
Senior United States District Judge